

DOI : 10.14746/pp.2014.19.3.6

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Evolution of the constitutional position of selected German-speaking countries' heads of state in the 20th/21st century¹

Abstract: This paper is an attempt to show the evolution of the constitutional position of the head of state in the years 1920–2013 in Austria, Liechtenstein and Switzerland, with special reference to the specificity of these systems (Austrian federalism, Liechtenstein's strong position of the monarch and collegial head of state in the Swiss case). It is based on a comparative analysis of the constitutional provisions of constitutional acts and their corresponding amendments. The timeframe of the paper is based on the period 1920–2013, due to the fact that at the very beginning of the 1920s two of the constitutional acts were created in the countries which are the subject of the paper: Austria (1920) and Liechtenstein (1921), which, despite many changes, exist today. The aim of the paper is to indicate differences in the position of the political head of state in 1920, and almost a century later.

Key words: Austria, Liechtenstein, Switzerland, head of state, constitutional position

The head of state is one of the most important state organs, mainly because of its symbolic role in a political system. While there is no doubt that the actual position of the head of state in a political system is determined by the person who performs that office, the legislator decides to fully grant the head of state tasks arising from the need to manage the state, to limit their scope, or to remove the head of state from decision-making process.

German-speaking countries² are quite a good example of how governance can remain in the hands of the head of state and also how governance may be limited to other organs (especially to parliament and government). Germany and Austria are currently examples of political systems in which the role of the president is limited almost exclusively to ceremonial matters (the same as the Grand Duke in Luxembourg), thereby the position of the current head of state in these countries is often used in literature on the topic to compare the position with the British monarch (James, 1998, p. 48). Therefore, in both cases, the head of state has a similar, ceremonial role, hence only the Austrian case will be discussed in the paper.

Unique on a European scale, the strong position of Liechtenstein's monarch raises a question about the evolution of his position in the system which led to granting rights

¹ The author received funding for his doctoral thesis from the National Science Centre in the framework of a doctoral scholarship funding based on the decision no. DEC-2014/12/T/HS5/00140.

² These are: Austria, Germany, Liechtenstein and Switzerland. Some authors also list Luxembourg (Sercu, 2000, p. 279).

more limited only than the Vatican's ruler. Finally, there is Switzerland, which is undoubtedly unique as the only model of a state in the world that has not adopted Montesquieu's concept of separation of powers, and this power is exercised by the people directly or through their representatives in parliament. From the point of view of this paper, the Swiss government (*Bundesrat*) plays a very important role in a system which is at once parliamentary and non-parliamentary (Jayapalan, 1999, p. 96). This body plays the double role of head of state and federal government. A similar situation, for other reasons, takes place in a presidential system (the US), in which executive power is vested in one person: the head of state (the president).

This paper is an attempt to draw attention to the evolution of the political position of the head of state in the years 1920–2013 in Austria, Liechtenstein and Switzerland, with special reference to the specificity of these systems. It is based on a comparative analysis of the constitutional provisions of constitutional acts and their corresponding amendments. The timeframe of the paper is based on the period 1920–2013, due to the fact that at the very beginning of the 1920s two of the constitutional acts were created in the countries which are the subject of the paper: Austria (1920) and Liechtenstein (1921), which, despite many changes, exist today. The aim of the paper is to indicate differences in the position of the political head of state in 1920, and almost a century later.

Austria

After that, when in 1918 the Austro-Hungarian monarchy disintegrated, becoming several countries, President Karl Seitz became the first head of state of Austria. In 1920, the parliament adopted the constitution which is in force to the present day. According to the wording of the Constitution, the Federal President was elected for a four-year term by the Federal Assembly. The person who was expected to exercise the most important office in the state was required to obtain an absolute majority in the Assembly. Michael Hainisch was the first president elected by the Assembly. He held office for two terms. Wilhelm Miklas became the next president.³

The period of 1920–1929 marked a limited role for the president of the Austrian political system. The president was not able to (and still cannot) participate in a representative body, and is not allowed to perform any other occupation. In the case of temporary incapacity, the powers of the head of state as a whole are given into the hands of the Chancellor. On 7 December 1929, the constitution was amended to give the head of state both executive and legislative authority, so the position of the president was significantly strengthened (Dunaj, 2010, p. 416). The government (elected by the parliament) was appointed by the president, who was commander in chief of the armed forces,⁴ and had power to dissolve the parliament. It was decided to change the rules of presidential elec-

³ Having served as Speaker of the National Assembly from 1923 to 1928, Wilhelm Miklas was elected on 10 December 1928 by the Federal Assembly.

⁴ Now he/she is the Commander-in-Chief of the Federal Army but supreme command over the Federal Army is exercised by the competent Federal Minister (Bundes-Verfassungsgesetz (B-VG), art. 80).

tion. The head of state was to be elected by popular vote for a term of six years. The first election was scheduled for 1931.⁵

Table 1

Power of the Federal President (Austria) (according to *Bundes-Verfassungsgesetz*)

art. 5 para. 2, art. 25 para. 2	For the duration of extraordinary circumstances the President may, at the request of the government, relocate the seat of the highest federal authorities and convoke the National Council elsewhere within the federal territory.
art. 16 para. 2	Authorised to initiate negotiations and to conclude treaties between Austrian Lander and other states, or their constituent states, bordering Austria.
art. 18 para. 3	Giving provisional law changing ordinances at the recommendation of the government and independently, or on their behalf when parliament is not assembled (or cannot meet in time, or is impeded from action by events beyond its control).
art. 18 para. 4	Convening the parliament when provisional law changing ordinances is issued when it is not in session.
art. 23c para. 2	Being informed about Austrian nominations of members to European bodies.
art. 27 para. 2, art. 28	Convoking the National Council (either newly elected, for ordinary or extraordinary session).
art. 28 para. 3	Declaring sessions of the National Council closed.
art. 29 para. 1	Dissolving the National Council.
art. 34 para. 3	Laying down the number of members to be delegated by each Lander.
art. 39 para. 1	Convoking the Federal Assembly.
art. 46 para. 1	Ordering referendums.
art. 47 para. 1	Authenticating federal laws and constitutional enactments.
art. 59b para. 1	Appointing members of special commissions (formed to control the pay of public employees who have been elected members of the National Council or Federal Council).
art. 65 para. 1	Representing the Republic internationally, receiving and accrediting envoys, sanctioning the appointment of foreign consuls, appointing the consular representatives of the Republic abroad and concluding treaties, directing that a selected treaty shall be implemented by the issue of ordinances.
art. 65 para. 2	Appointing federal civil servants and bestowing official titles on them.
	Creating and bestowing professional titles.
	Using the presidential right of pardon (in individual cases: pardoning persons sentenced without further resources of appeal, mitigating and commuting sentences pronounced by the courts, as an act of grace annulling sentences and granting remission from their legal consequences, and moreover quashing criminal proceedings in actions subject to prosecution <i>ex officio</i>).
	Declaring illegitimate children legitimate.
art. 65 para. 3	Granting honorary privileges, extraordinary gratifications, allowances and pensions, nominating and confirming persons in appointments and exercising other powers in personnel matters.

⁵ However, because of the worldwide financial crisis, all parliamentary parties agreed to suspend the election in favour of having Miklas reelected by MPs. In his second term of office, Miklas resigned under pressure from Germany in March 1938 after German troops had occupied Austria. Miklas appointed Seyss-Inquart to the offices of Minister and Chancellor and left his resignation from office in his hands.

art. 66	Ability to assign to the competent members of the government the right vested in him to appoint certain categories of federal civil servants and empower them to delegate, as regards certain categories of federal civil servants, this competence to authorities subordinate to him.
	Ability to authorise the government or the competent members of the Federal Government to conclude and implement (by the issue of ordinances) certain categories of selected state treaties.
	Ability to authorise the Land Government to conclude selected treaties when they neither modify nor complement existing laws; such an authorisation extends also to the power to direct that these treaties are implemented by the issue of ordinances.
art. 67a	Issuing the standing orders linked with the office of the President (<i>Präsidentschaftskanzlei</i>).
art. 69 para. 1	The President (together with members of the government) is entrusted with the highest administrative business of the Federation.
art. 70 para. 1	Appointing members of the government (chancellor and other ministers).
art. 71	Entrusting members of the outgoing government with continuation of the administration.
art. 72 para. 1	Taking an oath from members of the government.
art. 73 para. 1	Instructing a deputy minister to fulfil the duties of a minister when he/she is temporarily prevented from discharging his/her responsibilities.
art. 77 para. 3	Assigning to a particular minister the direction of particular matters which fall within the Federal Chancellery's competence.
art. 80 para. 1–2	Holding power over the Federal Army and serving as Commander-in-Chief.
art. 86 para. 1	Appointing judges.
art. 100 para. 1	Dissolving local parliaments (<i>Landtags</i>).
art. 101 para. 4	Taking an oath from the governor (<i>Landeshauptmann</i>).
art. 122 para. 4	Taking an oath from the President of the Public Audit Office (<i>Präsident des Rechnungshofes</i>).
art. 125	Appointing officials of the Public Audit Office (however the President may authorise the <i>Präsident des Rechnungshofes</i> to appoint officials of certain categories).
art. 134 para. 3–4	Appointing all members of the Administrative Courts (on both federal and local level)
art. 146 para. 2	Enforcing selected judgments given by the Constitutional Court and taking requests for those enforcements.
art. 147 para. 2	Appointing all members and substitute members of the Constitutional Court.
art. 148g para. 2, art. 148h para. 1	Appointing and taking an oath from members of the ombudsman board.

Additionally, albeit not exactly a presidential power, the president must be informed about Austrian nominations of members to European bodies (art. 23c para. 2).

Source: *Bundesverfassung*, 1999.

In 1934 a new constitution was issued. It extended the presidential term to seven years, removing the right of the people to elect the president. Re-election became possible. The Constitution strengthened the position of both the chancellor and the president. As Helmut Wohnout notes, the Constitution of 1934 gave the duumvirate of president and chancellor a dominant constitutional status (Wohnout, 2003, p. 145; Voegelin, 1999, p. 261). This Constitution (1934) is considered, according to the Austrian constitutionalism,

to be the end of the political continuity of the state (*Bruch der Rechtskontinuität*) (Pawłowski, 2011, p. 36).

In 1945, it was decided to return to the pre-war political solutions (in the version of 1929) and over the next few years the structure of the federal executive was not significantly changed (Auprich, 2009, p. 45). It is worth mentioning that one of the last amendments changed a regulation functioning since 1920, that the passive right to vote in a presidential election belongs only to Austrian citizens who are not members of the ruling families or families that ruled the country in the past.⁶ The first presidential elections by popular vote were to be organised in 1945. Because Allied Control Council did not approve the passing of the constitutional law, the election was held later. Since 1951 the Federal President has been elected by popular vote.

Interestingly, the Constitution states that if there is only one candidate, the election shall take place by referendum (*Bundes-Verfassungsgesetz*, art. 60 para. 1). This can be also organised before the expiry of the presidential term of office, so the Federal President can be removed from the office by this institution (but only if the Federal Assembly demands so). If the majority of citizens are against the proposal of the Assembly, it is assumed that the president has been elected for another term, and the National Council shall be dissolved (*Bundes-Verfassungsgesetz*, art. 60 para. 6). This form of responsibility is a quite unique institution in modern parliamentary systems.

Currently, the Federal President represents the federation abroad, approves treaties, and even declares illegitimate children legitimate (all listed in table 1). A significant part of the competences of the Federal President has been limited by the need to obtain the countersignature of the Chancellor or competent minister (and before: the Chancellor and the competent minister) or the need to submit a proposal to the Federal Government. Examples of such activities are: convoking the National Council elsewhere within the federal territory and relocating the seat of the highest federal authorities to another location in the federal territory, appointing the judges, signing federal laws and issuing provisional law changing ordinances. In relations with the government, the president is granted the right, typical of a parliamentary republic, to appoint members of the government by taking an oath, and entrusting members of the outgoing government with continuation of the administration.

In addition to the previous solutions, the performance of the duties of the head of state is worth mentioning. While the constitution of 1920 provided that the replacement of the head of state went to the chancellor, the current solutions provide a relatively unique construction when the inability to exercise office lasts longer than 20 days, or the president has been removed from office in an impeachment procedure, or in the situation of permanent vacancy of the office. Until the election of a new head of state, its presidential functions are fulfilled by a college composed of three members: the chairman of the National Council and two deputies. The college makes decisions by majority vote.

⁶ B. Naleziński notes that passive right to vote is excluded not only to members of Austrian rulers' families. Also excluded from standing as a candidate are members of other ruling houses, not only in Austria (Naleziński, 2007, p. 27; *Bundes-Verfassungsgesetz*, art. 60 para. 4 (in the wording of the version of 1920); Waterfield, 2010).

The constitutional position of the head of state can also be clearly set out by looking at the rules of responsibility for acts committed while in office. According to art. 63 para. 1 the institution of legal process against the Federal President is only admissible if the Federal Assembly agrees.⁷

Over the years, due to the membership of Austria in the structures of the European Communities, an obligation to inform the Federal President before issuing proposals for the appointment of members of the European Commission, the Court of Justice, the Court of First Instance, the Court of Auditors and the Managing Committee of the European Investment Bank has been written in to the constitution (*Bundes-Verfassungsgesetz*, art. 23c para. 2).

In conclusion, the present position of the Austrian head of state is based on the foundations of 1929 with some additional provisions made by constitutional amendments. The main weakening factor of the presidential position is requirement of the countersignature. The position of the president is strengthened by the provisions on enforcing some of the judgments pronounced by the Constitutional Court.

Switzerland

For researchers, the political system of Switzerland is undoubtedly an exceptional one, starting with the adoption of Rousseau's idea of the state remaining in opposition to the concept of Montesquieu's separation of powers, to the unique usage of the institutions of direct democracy, and ending with the very rare institution of collegial head of state. The Swiss system, based on entrusting the most important office in the country not to one person, but to a group of people, is replicated in the solutions adopted in the 20th century in the so-called Eastern bloc countries, where a presidium of parliament or other collective organs (such as the Council of State in Poland) exercised the functions of the head of state.

The doctrine does not have a clear opinion as to whether the status of the head of state belongs to the Federal Council (*Bundesrat*) or the President (*Bundespräsident(in)*), which itself shows how unique the Swiss political system is (Łukaszewski, 2011, p. 151–155). Unlike supporters of the thesis of a single-head of state in Switzerland, and for the purposes of this article, it is considered here that this status belongs to the Federal Council.

Many authors suggest that the French Directory (or *Directoire*) had an enormous impact on shaping the Federal Council in the early years of the formation of the Swiss political system (Fleiner, 2001, p. 82). But the political position of the Federal Council, later in the 20th and 21st centuries, was not subject to changes as large as in the two other countries. Subsequent amendments to the Constitution of 1874 did not bring any major changes to the position of the Council. It was only the adoption of the new constitution, effective today, that brought a number of new competences to the Swiss head of state.

⁷ The presence of more than half the members of each of the two representative bodies and a majority of two-thirds of the votes cast is required for a vote whereby a charge is preferred against the Federal President (*Bundes-Verfassungsgesetz*, art. 68).

However, it should be noted that both the Constitution of 1874 and of 1999 did not change the structure of the Federal Council and did not determine its place in the system of state bodies, so both establish that the highest executive and executive authority of the Confederation is the Federal Council which consists of seven members (*Bundesverfassung*, 1874, art. 95; *Bundesverfassung*, 1999, art. 174 and 175 para. 1). Chairing the Federal Council was entrusted to the President (*Bundespräsident(in)*), who, like the Vice-President (*Vizepräsident(in)*) exercise their function for a year.⁸ Each of the councillors is the head of federal department.⁹ The term of office of the Council itself was established initially for 3 years, and in 1931 it was extended to 4 years. It was forbidden to elect councillors from the same canton (*Bundesverfassung*, 1874, art. 96) and it was required to elect new councillors after each general election to the National Council.

The incompatibility rule was highlighted in three separate articles: the members of the Federal Council cannot also be members of the National Council (*Nationalrat*), Council of States (*Ständerat*) or Federal Court (*Bundesgericht*). In addition, it also stated that the members of the *Bundesrat* cannot perform any other occupation, purchase an annual salary from the federal treasury, or have the authority to call for special experts (*Bundesverfassung*, 1874, art. 77, art. 81, art. 108, art. 97, art. 99, art. 104). All these rules were to create a clearly independent political position, away from the influence of other federal authorities and interest groups. It also established a subordinate organ – the Federal Chancellery which was under special supervision of the Federal Council and was elected for the same term as the Council (together with the *Bundesrat*).¹⁰

The competence of the Federal Council was established primarily in a number of articles of Title II of the Swiss Constitution. In art. 101 the legislator enumerated the Federal Council's competences.¹¹ By 1898, the Council had the right to approve cantonal legislation connected with the freedom of the press, but this was removed by referendum.

The opening and the running of gambling houses was prohibited, and this ban was confirmed in a referendum in 1921, but in 1929 it was decided to give the cantonal authorities the right to permit recreational games but the restrictions were to made by the Federal Council. Councillors also had the right to approve gaming licenses (*Bundesverfassung*, 1874, art. 35).

Table 2

Power of the Swiss Federal Council (according to the Federal Constitution of 1999)

art. 157 para. 2	Federal Council (FC) gives declarations to the Federal Assembly.
art. 166 para. 2, art. 172 para. 3	The FC signs and approves international treaties whose approval is not reserved for the parliament (but if the Council raises some objections and the treaty is intercantonal or between cantons and foreign countries, it is approved by the parliament).
art. 184 para. 3, art. 185	In cases of emergency, the armed forces may be mobilised.

⁸ According to art 98. of the 1874 Constitution: “The same member cannot hold during two consecutive years” (*Bundesverfassung*, 1874, art. 98).

⁹ The internal structure of the Council was clarified in 1914, with a referendum that changed the content of the article 103.

¹⁰ So in 1931, the term was extended from 3 to 4 years (*Bundesverfassung*, 1874, art. 105).

art. 178 para. 1, art. 187 para. 1	The FC shall be in charge of the Federal Administration. It shall ensure that it is organized appropriately and that it fulfils its duties effectively.
art. 180	The FC shall plan and coordinate state activities and has to inform the general public about its activities and decisions on the objectives of federal government policy.
art. 187 para. 1 b)	The FC reports regularly to the Federal Assembly on the conduct of its business as well as on the situation in Switzerland.
art. 160 para. 2	The FC uses the right to introduce motions concerning an affair under deliberation of parliament.
art. 183	The FC is responsible for drawing up the financial plan and the draft budget and preparing the federal accounts.
art. 184	The FC is responsible for representing the federation abroad (the FC shall submit the treaties to the Federal Assembly for approval) and for being responsible for foreign relations (according to directions made by the Assembly).
art. 185	The FC is responsible for safeguarding the external security, independence and neutrality of Switzerland, the FC may issue ordinances (they must be of limited duration) and rulings.
art. 186	The FC maintains relations between the Federation and the cantons; the FC has a right to approve cantonal legislation (when required to do so by federal law) and shall ensure compliance with federal law, as well as the cantonal constitutions and cantonal treaties and shall take the measures required to fulfil this duty.
art. 181	The FC shall submit drafts of Federal Assembly legislation to the Federal Assembly, the FC shall enact legislative provisions in the form of ordinances, provided it has the authority to do so under the Constitution or the law and shall ensure the implementation of legislation, the resolutions of the Federal Assembly and the judgments of federal judicial authorities.

¹¹ The Council shall: 1) conduct federal affairs according to the federal laws; 2) ensure compliance with the constitution, the laws and the decrees of the Confederation as well as with the provisions of the federal concordats and take the necessary steps to secure their enforcement to the extent that such requests are not among those which fall within the jurisdiction of the Federal Court; 3) ensure that the guarantee of cantonal constitutions is not infringed; 4) submit to the Federal Assembly drafts of laws and decrees and shall give its opinion on proposals submitted to it by the Councils or the Cantons; 5) give effect to the federal laws and decrees, the judgments of the Federal Court as well as to the settlements or arbitral awards in connection with disputes between Cantons; 6) make appointments which are not entrusted to the Federal Assembly, the Federal Court or another authority; 7) examine the agreements of the Cantons among themselves and with foreign states and shall approve them if they are admissible; 8) watch over the external interests of the Confederation, particularly its international relations, and it shall be in charge of external affairs generally; 9) watch over external security and over the preservation of its independence and neutrality; 10) ensure the internal security and the preservation of peace and order; 11) in urgent cases, and if the Federal Assembly is not meeting, the Federal Council is entitled to raise the necessary troops and to dispose of them, with the reservation that it shall summon the Federal Assembly immediately if the troops raised exceed 2,000 men or remain under arms for more than three weeks; 12) be in charge of the military affairs of the Confederation and of all branches of the federal administration; 13) examine the laws and decrees of the Cantons which require its approval; it shall supervise such branches of cantonal administrations as are placed under its control; 14) manage the finances of the Confederation, draft the budget and render the accounts of receipts and expenditure; 15) supervise the official activities of all officials and employees of the federal administration; 16) at each ordinary session, it shall render an account of its activities to the Federal Assembly and submit a report on the internal as well as on the external state of the Confederation and it shall draw the Federal Assembly's attention to such measures as it deems useful for the promotion of common prosperity. It shall also submit reports on specific questions if the Federal Assembly or one of its sessions so request (*Bundesverfassung*, 1874, art. 102).

art.151 para. 2	The FC has the right to call the chambers to an extraordinary session.
art. 187	The FC is given duties and powers of making appointments that do not fall within the remit of other authorities and dealing with appeals, where the law so provides.

Source: *Bundesverfassung*, 1999.

In 1938, it was decided that the Federal Council shall enact the necessary regulations for the implementation of federal regulations concerning the granting, duration and recall of gun concessions. In 1981 an article protecting consumers' and sellers' interests was added. The Council made some rules which helped the cantons to manage an arbitration procedure or a simple and quick litigation procedure (*Bundesverfassung*, 1874, art. 31e). This was the last amendment to the Constitution of 1874 which changed anything in the status of the Council.

The Constitution of 1999 repeats the wording of art. 95 of the previous constitution, according to which the Federal Council is the highest governing and executive authority of the Federation (*Bundesverfassung*, 1999, art. 174). The mode of election, the number of members and the term remained unchanged. In 1999, the Federal Assembly was obligated, in electing the Federal Council, to ensure that the various geographical and language regions of the federation are appropriately represented (*Bundesverfassung*, 1999, art. 145, 168, 175). The Federal Chancellor, subordinated to the Council, was obliged to manage the Federal Chancellery (*Bundesverfassung*, 1999, art. 179). The Constitution retained the President and Vice-President institutions, leaving unchanged the length of their term of office (*Bundesverfassung*, 1999, art. 176).

Regulations on the incompatibility rule under which federal councillors may not be members of other state bodies or exercise another gainful activity, widespread in the previous constitution, finally were collected together in article 144 (*Bundesverfassung*, 1999, art. 144). The regulatory role of the Council in matters of consumer disputes¹² and the right to call the parliamentary chambers to an extraordinary session, were maintained (*Bundesverfassung*, 1999, art. 151 para. 2).

The current constitution explicitly stressed two principles of the Swiss political system: collegiality and division into departments.¹³ Parliamentary supervision over the Federal Council was written in articles 169 and 171. In turn, Article 162 provides immunity for councillors and for the Federal Chancellor.

Unlike the previous constitution, the one currently in force does not enumerate the Federal Council's competences in one particular article (they are included in a number of separate articles of the Constitution). In addition to a wide catalogue of regulations dealing with the tasks assigned by the parliament, the Constitution also provides several powers for the Council in the administration of federal management, drawing up financial

¹² Article 97 para. 3: The Cantons provide a conciliation procedure or a simple and speedy judicial procedure for cases below a certain value in dispute. The Federal Council specifies the value limitation in litigation (*Bundesverfassung*, 1999, art. 97 para. 3).

¹³ According to art. 177, the Federal Council shall reach its decisions as a collegial body, the business of the Council shall be allocated to its individual members according to department, and business may be delegated to and directly dealt with by departments or their subordinate administrative units; in such cases, the right to legal recourse shall be guaranteed (*Bundesverfassung*, 1999, art. 177 and 178 para. 2).

plans and draft budgets, as well preparing the federal accounts, using the right to introduce motions concerning an affair under deliberation of parliament, participation in federal legislation process, deciding on the objectives of federal government policy (see table 2).

With regard to the current constitution, to this day, there have not been any changes to the Federal Council, with two exceptions. In 2002 Switzerland became a full member of the United Nations so art. 197 was added and the Federal Council was authorised to submit an application to the Secretary General of the United Nations requesting Switzerland's accession to the organisation. Three years later, art. 189 was modified so that acts from the Federal Council cannot be disputed in front of the Federal Court (*Bundesverfassung*, 1999, art. 189 para. 4) which significantly strengthened the position of the Council.

Liechtenstein

After centuries when Liechtenstein remained in close relations with its eastern neighbour (Austria), at the beginning of the 1920s, the reorientation of foreign policy brought the Principality closer to the West. At the same time, the first political parties began to appear. Changes also took place in the constitutional system of Liechtenstein, due to the adoption (1921) of the constitution which is in force to this day.

According to article 2, the Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis, where the power of the state is embodied in the reigning prince and the people. The Constitution clearly indicates that the Reigning Prince is the head of state and shall exercise his rights pertaining to the powers of state (*Verfassung*, 1921, art. 2, 5, 7 para. 1). Over the ensuing century a few rules concerning the Prince have remained as they were in the version of 1921. In addition to those mentioned above, art. 5 (about the coat of arms of the princely house), art. 9 (sanctioning the law by the Prince), art. 8 (right to represent Liechtenstein in all its relations with foreign countries), art. 12 (right of pardon, of mitigating or commuting legally adjudicated sentences, and of quashing initiated investigations), art. 48 and 49 (adjournment, convening, prorogation and dissolution of the *Landtag*), art. 54 and 55 (taking an oath from the MPs and participating in parliament opening ceremony), art. 64 (right of introducing bills) and art. 87 (taking an oath from the Prime Minister), remain unchanged.

Table 3

Constitutional changes connected with the legal position of the Reigning Prince of Liechtenstein

Year	Amendments and articles of the Constitution of the Principality of Liechtenstein (1921–2013)
	Article 7 para. 2
1921	The person of the Reigning Prince is sacred and inviolable.
2003	Changed into: <i>The person of the Reigning Prince shall not be subject to jurisdiction and shall not be legally responsible. The same shall apply to the member of the Princely House exercising the function of Head of State on behalf of the Reigning Prince pursuant to article 13bis.</i>

	Article 10 para. 2
2003	Added an amendment regulating the emergency decrees (the provisions of art. 10, art. 3, art. 13ter, and art. 113, and of the Law on the Princely House may not be limited by emergency decrees).
	Article 11
1921	<i>The Prince Regnant shall appoint the State officials in conformity with the provisions of the present Constitution. New permanent official posts may be created only with the assent of the Landtag.</i>
2003	Changed into: <i>The Prince shall appoint the Judges in accordance with the provisions of the Constitution.</i>
	Article 13
1921	<i>Para. 1. Every governmental successor [Regierungsnachfolger] shall, before receiving the oath of allegiance, declare upon his Princely honour and dignity in a written proclamation that he will govern the Principality of Liechtenstein in conformity with the Constitution and the other laws, that he will maintain its integrity, and will observe the rights of sovereignty indivisibly and in like manner.</i> <i>Para. 2. In the case of a prolonged absence from the country, the Prince Regnant will send a prince of his House to the Principality for a specified period each year, and also as occasion may require, and will empower him to act as his representative and to exercise the sovereign rights appertaining him.</i>
1984	Article 13 para. 2 repealed in 1984.
2003	Editorial amendment – words <i>governmental successor</i> [Regierungsnachfolger] were replaced by <i>successor to the throne</i> [Thronfolger].
	Article 13bis
1984	In 1984 an amendment forming the institution of co-regency was made. Thanks to this provision, the Reigning Prince may entrust his exercising sovereign rights to the next Heir legitimate adult prince. He may use this provision in two cases: temporary inability in the exercising of his duties and if he wants to prepare the next Heir legitimate prince for his duties as the Reigning Prince-to-be.
2003	Editorial amendment – words <i>governmental successor</i> [Regierungsnachfolger] were replaced by <i>successor to the throne</i> [Thronfolger].
	Article 13ter
2003	Inserted an article about a motion of no-confidence against the Reigning Prince (not less than 1,500 Liechtenstein citizens have the right to submit it).
	Article 65 para. 1
1921	A law became valid after receiving the assent of the <i>Landtag</i> and sanctioning (with the countersignature of the member of government) by the Reigning Prince.
2003	In 2003, a sentence was added (<i>de facto</i> veto power given to the Prince): <i>If the Reigning Prince does not grant his sanction within six months, it shall be deemed to have been refused.</i>
	Article 70
1921	The <i>Landtag</i> with the Prince Regnant had control over the assets of the State Treasury.
2003	Changed in 2003 (erasing the role of the Prince Regnant): <i>The government manages the financial assets of the State in accordance with the rules determined with the Landtag. The Government shall submit a report to Parliament together with the annual accountability report.</i>
	Article 78 para. 1
1921	The administration (with the exception of school affairs) was concerned by the Prince and the <i>Landtag</i> .
1963	Due to extension of article 78 in 1963, para. 1 was slightly modified.
1971	Removed the exception <i>with the exception of school affairs</i> .

	Article 79 para. 1, 2, 3, 5
1921	The PM and his deputy were appointed (and re-appointed) by the Prince with concurrence of the Landtag and on the proposal of the latter.
1965	In 1965 it was decided to expand the government to 5 members (the PM and 4 other ministers). All ministers (and their alternates) are appointed by the Prince with the agreement of <i>Landtag</i> and on its proposal.
	Article 80
1921	The Prince has the power to dismiss the minister after his losing the confidence of the people and the <i>Landtag</i> .
1965	In 1965, it was decided to remove expression about losing the confidence of the people, leaving intact the expression about losing the confidence of the <i>Landtag</i> . The Prince has the power to dismiss a minister.
2003	A minister (or government as a whole) may lose the confidence of either the Prince or the <i>Landtag</i> . The Prince may appoint a transitional Government to manage the entire administration in the interim.
	Article 95
2003	In art. 95 para. 1 it was amended so that the entire administration of justice shall be carried out in the name of the Reigning Prince and the People. The Judges are appointed by the Reigning Prince.
	Article 96
2003	The Reigning Prince and Parliament shall avail themselves of a joint body for the selection of Judges. The Prince chairs this body and has the casting vote. He may appoint as many members to this body as the number of representatives delegated by Parliament. The body may only recommend candidates to Parliament with the consent of the Prince. If Parliament elects the recommended candidate, the Prince appoints this candidate as Judge. The candidate for a judge (who is rejected by the <i>Landtag</i>) obtaining the absolute majority of the votes in referendum is appointed as judge by the Reigning Prince.
	Article 97
1921	The Administrative Court (<i>Verwaltungsbeschwerde-Instanz</i>) (3-member body; the chairman was appointed by the Prince on parliamentary recommendation).
1949	Expanding the Administrative Court to 5 members (the chairman was appointed by the Prince on parliamentary recommendation).
2003	The Ordinary Courts (the Administrative Courts transferred to art. 102): Ordinary administration of justice is carried out in the first instance by the Princely Court of Justice, in the second instance by the Princely Court of Appeal, and in third instance by the Princely Supreme Court.
	Article 99
1921	Art. 99 para. 1. <i>The entire jurisdiction is exercised on behalf of the Prince committed by judges.</i>
2003	Changed into: <i>The fiscal authorities and the officials of the Princely domains shall be subject to appear before the ordinary Courts as plaintiffs and defendants.</i>
	Article 102
1921	Members of the High Court and the Supreme Court were appointed by the Prince (with <i>Landtag</i> 's acceptance).
2003	The Administrative Court consists of 5 judges and 5 alternate judges appointed by the Reigning Prince.
	Article 105
1921	The election of the President of the Supreme Court was subject to confirmation by the Prince Regnant.
2003	All judges (and alternates) of the Supreme Court are appointed by the Reigning Prince.

	Article 108
2003	Text of an oath given by ministers, State employees, all mayors (and their deputies), and the municipal treasurers: <i>I swear that I will be loyal to the Reigning Prince....</i>
	Article 112
2003	Assent of the Prince to approve constitutional amendments or universally binding interpretations of the Constitution (with the exception of the procedure to abolish the monarchy).
	Article 113
2003	Not less than 1,500 citizens have the right to submit an initiative to abolish the monarchy (if the initiative is adopted by the People, <i>Landtag</i> draws up a new Constitution on a republican basis and submits it to a popular vote after one year at the earliest and two years at the latest). The Reigning Prince shall have the right to present a new Constitution for the same popular vote.
Art. 2, 5, 7 para. 1, 8, 9, 12, 45, 48 para. 1, 49 para. 1, 54, 55, 64 para. 1, 86, 87, 92 para. 1 remained unchanged.	
The following articles have been slightly changed (the position of the prince has not been changed): art. 3 (2003), art. 51 (2003), art. 63 (1989 and in 2003), art. 66 para. 5 (2003), art. 74 let. e (2003), art. 85 (1971).	

Constitutional amendments adopted in 2003 shown in grey.

Source: Own analysis based on *Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921*.

In 1921–2002 only a few articles related to the head of state were modified. All of them were sanctioned after the Second World War. The first amendment was adopted in 1947. In 1984 it was modified. Both were connected with convention and dissolution of *Landtag*. According to art. 48 para. 2 and 3 (in the wording of 1921) parliament had to be convened for written request of 3 municipalities or at least 400 Liechtenstein citizens.¹⁴ In 1965 it was decided to give the Prince power of all ministerial appointments.

Until 2003 there were only a few more constitutional amendments connected with the position of the head of state in the political system of Liechtenstein. In 1984, the legislator decided to create an institution of co-regency (or regency). According to the inserted art. 13bis the Reigning Prince may entrust the next Heir legitimate adult prince as his representative to exercise sovereign rights. He may use this constitutional provision only in two cases: when he is not able to exercise his duties or if he wants to prepare the Heir legitimate prince for accession to the throne.¹⁵

The referendum in 2003 brought an amendment which undoubtedly may be called revolutionary. Over a dozen constitutional articles were modified. The vast majority of them strengthened the position of the Reigning Prince (see table 3). The main provisions are: — laws concerning the Princely House may not be limited by emergency decrees;

¹⁴ At least 600 citizens and 4 municipalities were able to demand a popular vote on the dissolution of Parliament. Both were in the Reigning Prince's hands. These paragraphs were modified later twice: in 1947 and 1984. The first amendment increased the minimum of citizens required to demand the Parliament convention to 600 and the minimum of citizens required to demand a popular vote on the dissolution the Parliament to 900. In 1984 these numbers were changed successively: 1,000 citizens for convention and 1,500 for popular vote on the dissolution the Parliament (*Liechtenstein in Figures*, 2012, p. 11).

¹⁵ In 1984 Prince Franz Joseph handed over most of his powers to his son, Hans-Adam. On 15 August, 2004 Prince Hans-Adam II turned the power of making governmental decisions over to his eldest son, the Prince Alois.

- legislative veto power¹⁶ – if the Reigning Prince does not grant his sanction within six months, it shall be deemed to have been refused;
- legislative veto power in relation to constitutional amendments – assent of the Prince is required to approve constitutional amendments or universally binding interpretations of the Constitution (with the exception of the procedure to abolish the monarchy);
- power to dismiss ministers – if the Government (as a whole or an individual minister) loses the confidence of the Reigning Prince or of Parliament, its authority to exercise its functions expires;
- leading the special body for the selection of judges – the Reigning Prince and *Landtag* avail themselves of a joint body for the selection of Judges; the Prince chairs this body and has the casting vote.

The amendment of 2003 introduced unique institutions such as a motion of no-confidence against the Reigning Prince (if submitted by no less than 1,500 Liechtenstein citizens) and the right to submit an initiative to abolish the monarchy – no less than 1,500 citizens may submit an initiative to abolish the monarchy (if the initiative is adopted by the People, the *Landtag* draws up a new Constitution on a republican basis and submits it to popular vote after one year at the earliest and two years at the latest); the Prince has the right to present a new Constitution for the same popular vote.

If you look at Europe, the amendment of 2003 has given the Prince powers smaller only than the authority of the Pope in the Vatican City.¹⁷ The amendment was criticised by the European Commission for Democracy through Law (better known as the Venice Commission) in 2002: “it would not only prevent the further development of constitutional practice in Liechtenstein towards a fully-fledged constitutional monarchy as in other European countries, but even constitute a serious step backward” (*Opinion*, 2002, point 41). The Commission does not seem to notice that by the amendment the people were given the power to launch a motion of no-confidence against the Prince, and even to abolish the monarchy. These institutions cannot be found in other European monarchies. It remains a matter of debate whether these two institutions may balance the princely rights to veto all bills (including constitutional amendments), to dismiss a minister and those others listed above.

Summary

Generally, answering the questions posed at the beginning of the paper, it must be noted that the German-speaking countries’ legislators (discussed in this paper) have tried

¹⁶ The Government of Liechtenstein states that the opinion of the Venice Commission misjudges this by referring to a “veto” (cf. paragraph 21) (*Statement*, 2003, letter B).

¹⁷ According to art. 1 of the Fundamental Law of Vatican City, the Supreme Pontiff, Sovereign of Vatican City State, has the fullness of legislative, executive and judicial powers (*Fundamental Law*, 2000, art. 1; Reese, 1996, p. 116). Some ignore the Vatican case (due to the lack of electoral democracy) and claim that the referendum of 2003 made the head of state the most politically powerful in Europe (*Freedom*, 2011, p. 398).

to maintain or even strengthen the position of the head of state. It should be emphasised that the Austrian head of state initially (1920) had a limited role in the political system. Nine years later, the position of the president increased. In 1934 the position remained, despite some constitutional changes. After the Second World War, the position returned to that from 1929, with some extra (but less important) competences. In 1920, there was a presidency typical of a parliamentary republic, and now it can be considered as slightly stronger than a typical parliamentary republic. Now the Federal President is elected by the people for a 6-year term.

In addition to the mechanisms such as appointing the heads of the bodies of the judicial and executive branches and receiving an oath from them, typical of European parliamentary systems, the president has such a unique privilege as declaring illegitimate children legitimate. Another special mechanism is granting citizens the right to remove the president from office. Furthermore, there are solutions regarding the relationship between the president as a representative of the federal level and the authorities at the local level. Austria is the only one of the countries mentioned in this paper that is a member of the European Union. Austria's participation in the integration processes resulted in changes to the position of the head of state. Thus, the president has the right to be informed of Austrian candidacies for positions in the EU.

Regarding the Swiss case, the main constitutional foundations of the Federal Council from the Constitution of 1874 has been left unchanged and was transferred to the Constitution of 1999. Undoubtedly, the amendment which influenced the political position of the Council was the one from 2005, which said that acts from the Council cannot be disputed in front of the Federal Court. Comparing the position of the Council in 1920 and now, it must be concluded that the power of the position has slightly increased (mainly due to the slight increase of competences). Without a doubt, a significant strengthening of the position of the Council would be provided by this mode of election. The strong position of the Council is determined not only by federal law, but also by customs and tradition. An example of its use is re-electing Federal Councillors as long as they stand for re-election.¹⁸ In 2010, the Swiss Peoples Party (*Schweizerische Volkspartei*) launched a popular initiative for direct election of the Bundesrat (Holzheu, 2010). It was not the first initiative on this issue. In 1900, and again in 1942, it was rejected by two-thirds of the Swiss people. A similar result is expected in the next referendum. Regardless, debate around this issue is still observed.

In Europe there are currently 12 sovereign monarchies, of which one is an absolute monarchy (Vatican City), two are constitutional monarchies (Monaco and Liechtenstein), and the others are parliamentary monarchies whose monarchs play almost entirely symbolic roles. In the Principality of Liechtenstein, the amendments passed in 1921–2002 had almost no influence on the position of the head of state, so the reigning prince was a typical monarch of a parliamentary monarchy. New articles from the amendment in 2003 gave the prince a political position close to that of an absolute monarch. The only issue linked with the head of state's position that was not changed in 2003 but a few years

¹⁸ T. Fleiner, A. Misić, N. Töpperwien point only one exception of 2003 (Fleiner, Misić, Töpperwien, 2005, p. 83).

earlier, was the issue of co-regency and replacement of the monarch in the exercise of constitutional functions. In 1984, it was decided to eliminate the constitutional provision about absence from the country, and to introduce the possibility to transfer exercising sovereign rights from the head of state to the successor to the throne.

It is worth emphasising that while modern Europe had to deal with slow evolution, more associated with the gradual reduction of powers of the monarch, the case of the referendum in Liechtenstein (2003) leads us to raise a question about the future of European monarchies and the position of monarchs in political systems there, because a monarch is not a political institution derived from popular election, and hence does not have legitimacy from the citizens to exercise his/her powers. For this reason, the further evolution of the head of state in Liechtenstein seems interesting.

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Ewolucja konstytucyjnej pozycji głowy państwa w wybranych państwach niemieckojęzycznych na przełomie XX i XXI wieku

Streszczenie

Przedmiotem artykułu jest próba ukazania ewolucji ustrojowej pozycji głowy państwa w latach 1920–2013 w Austrii, Liechtensteinie i Szwajcarii, ze szczególnym uwzględnieniem specyfiki tych systemów politycznych (austriackiego federalizmu, silnej pozycji księcia w Liechtensteinie i kolegalnej głowy państwa w Szwajcarii). Artykuł został oparty na analizie komparatystycznej zapisów konstytucyjnych z uwzględnieniem odpowiednich nowelizacji. Ramy czasowe artykułu zostały oparte na okresie 1920–2013 w związku z tym, że początek lat 20. jest związany z powstawaniem konstytucji dwóch z trzech państw stanowiących przedmiot analizy: Austrii (1920) i Liechtensteinu (1921), które to akty prawne, pomimo wielu zmian, funkcjonują do dzisiaj. Celem artykułu jest wskazanie różnic w pozycji ustrojowej głowy państwa w 1920 roku i prawie 100 lat później.

Słowa kluczowe: Austria, Liechtenstein, Szwajcaria, głowa państwa, pozycja ustrojowa

